

1 MR. HARDMAN: Okay.

2 JUDGE CHACHKIN: That's contemporaneous. That's
3 when his, obviously his recollection --

4 MR. HARDMAN: There, there were notes. They were
5 furnished to us in the response to interrogatories.

6 MR. WALKER: I'm not sure what was there.

7 JUDGE CHACHKIN: These are the notes you took at the
8 time of the visit?

9 MR. WALKER: Yes, sir.

10 JUDGE CHACHKIN: Have you seen these notes taken at
11 the time of the visit?

12 MR. HARDMAN: I, without reviewing the documents,
13 I'm assuming I was provided the complete copy.

14 JUDGE CHACHKIN: Of the notes?

15 MR. HARDMAN: Of the notes. We, this, this was in a
16 response to an interrogatory, or the request for production of
17 documents. Actually, I think it was an interrogatory and the
18 notes were provided in, in lieu of a --

19 MR. WALKER: I know the notes were provided to the
20 FOB attorney in response to --

21 JUDGE CHACHKIN: All right.

22 MR. WALKER: -- a Freedom of Information request.

23 JUDGE CHACHKIN: All right. Any further questions?
24 It has to be rebuttal or else I'm not going to permit it --

25 MR. JOYCE: I understand.

1 JUDGE CHACHKIN: -- not going to start this from the
2 beginning.

3 MR. JOYCE: I understand. Mr. Walker, have you ever
4 in any of your investigations of a paging company had the
5 owner or the vice president tell you that they could not
6 provide you with a list of their pager numbers and their
7 customers?

8 MR. HARDMAN: Your Honor, I --

9 MR. JOYCE: This is rebuttal. It's perfectly --

10 JUDGE CHACHKIN: It's not rebuttal.

11 MR. JOYCE: It's, Mr. Raymond has testified that he
12 could not, I'm going to --

13 JUDGE CHACHKIN: He could not what?

14 MR. JOYCE: That he could not provide them on the
15 spot with a list of pager numbers and customers.

16 MR. HARDMAN: The, Your Honor --

17 JUDGE CHACHKIN: There's no evidence that
18 Mr. Raymond was asked to provide that on the spot.

19 MR. JOYCE: Oh, my goodness. This, this witness is,
20 I thought being --

21 JUDGE CHACHKIN: -- dealing with who you would ask
22 to provide you with subscriber lists.

23 MR. WALKER: Probably not.

24 JUDGE CHACHKIN: There isn't. Is there something in
25 your report which indicates who you specifically asked?

1 MR. JOYCE: It was just the subject of
2 cross-examination?

3 JUDGE CHACHKIN: I understand. And I'm asking,
4 there is nothing in his notes that I could see which deals
5 with the subject of subscriber lists. Am I wrong?

6 MR. JOYCE: Mr. Walker, didn't both you and
7 Mr. Bogert ask Mr. Raymond to give you the names of customers?

8 MR. WALKER: We did ask. Mr. Raymond and, and
9 Mr. Harrison were both present.

10 JUDGE CHACHKIN: What about Mr. Wilson?

11 MR. WALKER: Possibly, but I'm not sure at this
12 point.

13 JUDGE CHACHKIN: So is it possible that it could
14 have been Mr. Wilson who, who you asked, or your, person you
15 --

16 MR. WALKER: One of, one of the lists was provided
17 by Mr. Harrison, provided to me by Mr. Harrison.

18 JUDGE CHACHKIN: By Mr. Harrison.

19 MR. WALKER: There, I would, from that I believe
20 that the request was made in the presence of Mr. Harrison and
21 Mr. Raymond if it was in the, in Capitol's office, and
22 Mr. Wilson was perhaps present as well. If it was outside the
23 office, Mr. Wilson was not present.

24 JUDGE CHACHKIN: Did, do you recall where the
25 request was made?

1 MR. WALKER: No, I do not.

2 MR. JOYCE: Mr. Walker, my question has nothing to
3 do with the following day and those lists that were given to
4 you. Real simple, when you asked Mr. Raymond there if he
5 could give you the names of his pagers that were on that PCP
6 frequency --

7 MR. HARDMAN: Your Honor, I'm going to object
8 because I don't believe that's what the record shows, and, and
9 how the question is phrased is pretty fundamental --

10 MR. JOYCE: All right. I'll rephrase it.

11 MR. HARDMAN: -- and you're getting into a question
12 of, of who shot John and what the recollection is.

13 BY MR. JOYCE:

14 Q I'll rephrase the question so that Mr. Hardman
15 doesn't have an objection. You, while you investigated, it
16 was obviously of concern to you to determine whether or not
17 Capitol had customers on the air, because you wanted to know
18 if that tone sequence had anything to do with actual
19 commercial operations, I, I presume. Isn't that fair to say?

20 A I don't think that's the case, no.

21 Q Okay. Part of your investigation, part of your
22 testimony on direct was that you wanted to find out if they
23 had customers? Am I saying this --

24 A That's, that's correct.

25 Q Okay. Irrespective of that test?

1 A Because, I was interested in this because the only
2 thing that I had heard over the air appeared to be these
3 tests.

4 Q All right. Now I understand. So you did, and I
5 won't characterize how you raised this topic, but you did
6 address this topic to Mr. Raymond in some way, did you not?
7 The issue of whether or not he had customers on that PCP
8 frequency, could, could he provide you with the names and
9 numbers or some sort of information about this?

10 A Yes, we, we did ask for a list of subscribers.

11 Q Okay. And we heard him testify about this, just
12 moments ago. He told you what?

13 MR. HARDMAN: Your Honor?

14 MR. JOYCE: In your words, because your --

15 MR. HARDMAN: It's asked and answered now. This is,
16 this was asked and answered by Mr. Joyce and then you --

17 MR. JOYCE: I can't testify.

18 MR. HARDMAN: -- re-asked the question, no, the
19 question was asked and answered. It was asked and answered
20 again by Your Honor. The witness said --

21 MR. JOYCE: I'm not asking your --

22 MR. HARDMAN: -- he doesn't recall.

23 JUDGE CHACHKIN: Well, I'm going to sustain the
24 objection. We've had enough of this --

25 MR. JOYCE: Were you surprised --

1 JUDGE CHACHKIN: -- going over this. If you want to
2 ask him was he surprised, you should have asked him when he
3 was on direct. There's got to be an end to this. Rebuttal is
4 rebuttal. It's not an attempt to try to improve your original
5 direct case. That's what's happened here.

6 MR. JOYCE: So Mr. Raymond --

7 JUDGE CHACHKIN: That's not rebuttal.

8 MR. JOYCE: All right. I'm almost done, Your Honor.
9 I apologize. So Mr. Raymond said that he couldn't provide you
10 with that information, I believe, because he doesn't have a, a
11 printer at their monitor at the computer. But isn't it true,
12 Mr. Walker, that you could have simply looked at the
13 information on the screen?

14 MR. WALKER: I don't know. The reply is in the form
15 of the PRB Exhibit 5.

16 MR. JOYCE: I'm not sure I follow on that.

17 MR. WALKER: The reply to my request for a list of
18 subscribers is the documents in PRB-5. I believe it's five,
19 but the --

20 MR. HARDMAN: That's right.

21 MR. JOYCE: Yesterday, Mr., Mr. Peters on the stand
22 said, Mr. Walker, to move on to a completely different topic,
23 Mr. Peters said, when I asked him would it be okay for a
24 private carrier paging licensee to take, in an extreme
25 example, television set playing "I Love Lucy", plug it into

1 your transmitter, and retransmit that over the air, would RAM
2 Technologies have been required to cease transmitting until
3 they were done doing that. Do you remember that?

4 JUDGE CHACHKIN: He is not your rebuttal witness.
5 The Bureau did not ask any questions in that area and I'm not
6 going to permit you to. This is not, you're not examining on
7 the basis of what the Bureau asked.

8 MR. JOYCE: You're right.

9 JUDGE CHACHKIN: And I'm not going to let you start
10 asking questions. He's not your rebuttal witness and you
11 can't make him your rebuttal witness. I'm not going to permit
12 it. You are limited to what the Bureau asked, put in for
13 rebuttal, and nothing more.

14 MR. JOYCE: All right.

15 JUDGE CHACHKIN: We're not going to start all over
16 again with this hearing, bring back Mr. Peters and all the
17 rest. We've had our hearing. This is simply rebuttal,
18 allegedly rebuttal. If you have any further questions dealing
19 with what the Bureau asked, you can ask. If not, please sit
20 down.

21 MR. JOYCE: My last question, Mr. Walker. The
22 presiding officer asked you about your investigation of RAM
23 Technologies, which occurred roughly the same period when you
24 investigated Capitol. Do you recall that?

25 JUDGE CHACHKIN: I merely asked him whether there

1 were any, any complaints filed after the date of the
2 investigation, and he indicated he had no record of such.

3 MR. JOYCE: All right. I have no further questions.

4 JUDGE CHACHKIN: Mr. Hardman?

5 MR. HARDMAN: Thank you.

6 RE-DIRECT EXAMINATION

7 BY MR. HARDMAN:

8 Q I must confess, Mr. Walker, I'm, I'm very puzzled
9 about your concern on the testing, the purpose of the testing
10 when you were there at the inspection. And as I recall your
11 testimony, sort of cutting to the chase a little bit, you
12 weren't satisfied with the information you had been provided
13 from anybody up until the time Mr. Harrison got there, is that
14 right? You weren't satisfied that you had a, a, a candid
15 explanation of the testing, of the, I'm sorry, of the tone
16 sequences?

17 A I think that's correct for the reason for the
18 testing.

19 Q Right.

20 A It's also correct for the method.

21 Q Okay. So, so you had a question in your mind.
22 Mr. Harrison gets there, who apparently was unaware of the, of
23 the fact that you're inspecting, the FCC, isn't that right?

24 A Apparently.

25 Q And he willingly, you know, reconstructs the test

1 sequence and expresses puzzlement as to why whatever happened,
2 happened, that it wasn't already on the screen. Isn't that
3 right?

4 A That's the way I recall it, yes.

5 Q And, and isn't it a fact that you didn't then ask
6 him, I mean you, you didn't ask him at that point, you know,
7 what's, what are these tone sequences all about. You didn't
8 ask him that, did you?

9 A I don't recall that we did ask him that.

10 Q Well, what I'm puzzled about is if this man, who is
11 obviously knowledgeable and sufficiently senior employee at
12 Capitol comes into the inspection and is very cooperative and
13 in, in providing you with the information on the procedures
14 that you require, if you indeed had any significant
15 suspicions, why didn't you interrogate him at the time?

16 A We had moved on from that topic. We had moved on
17 from the why to the how.

18 Q So, in, in other words, it wasn't important enough
19 for you to revisit, isn't that right?

20 A I wouldn't say that it was not important.

21 Q I didn't say wasn't important in the abstract. It
22 wasn't important enough for you to go back and revisit with
23 Mr. Harrison, isn't that right?

24 A We did not, to the best of my recollection --

25 Q Okay.

1 A -- question him on that.

2 Q Will you please turn to Exhibit CAP-19, which is
3 behind tab 20 in the white book. And this is, while you're
4 turning to it, the exhibit on the memorandum from the Private
5 Radio Bureau to conduct the inspection. Do you have that,
6 sir?

7 A Okay. This is dated July 19th, '91?

8 Q That's correct. And isn't this the instruction
9 issued by the Private Radio Bureau to have the inspection in,
10 in Charleston?

11 A It appears to be, yes, sir.

12 Q Do you recall seeing this or having been apprised of
13 its contents at the time the, the inspection was scheduled?

14 A I don't recall whether I did or did not see it. I
15 was aware that, that, that RAM was alleging testing.

16 Q Right. And you were also aware that, that that was
17 the reason that the inspection was being done, this, this
18 wasn't just a random inspection, you were being asked to
19 conduct it for this particular reason, isn't that right?

20 A No, sir, not for this particular reason.

21 Q Is it your --

22 A For the on-going, my impression was the on-going
23 fighting between the two.

24 Q Well, would you review Exhibit CAP-19 and, and tell
25 me whether that, that the instructions and directions in there

1 are inconsistent with your recollection of why you conducted
2 the inspection?

3 A This certainly is a part of it, but I do not believe
4 that this is the entire reason for the request to do the
5 investigation.

6 Q Well, is that, there, the last sentence in that
7 memorandum, was that your understanding of what you were
8 supposed to do?

9 A I was, I was aware of Mr. Shiben's desires.

10 Q And those desires were to find grounds to revoke
11 Capitol's license, isn't that right?

12 A His desires were to find grounds for revocation, I
13 do believe. I would have to say that that was not my intent.

14 Q I understand. And I'm not suggesting, but what I'm
15 trying to establish is that when you went there to Charleston,
16 you understood that Mr. Shiben and perhaps other officials at
17 the Private Radio Bureau that had requested you to conduct the
18 --

19 MS. FOELAK: Your Honor, objection. He's trying to
20 get into evidence what Mr. Shiben's state of mind was --

21 MR. HARDMAN: No --

22 MS. FOELAK: -- and without questioning Mr. Shiben,
23 apparently.

24 MR. HARDMAN: No, Your Honor. What I'm trying to,
25 to find out is, in effect, this witness's state of mind when

1 he conducted the investigation. And that, what this goes to
2 why he would infer from certain conduct, or might infer from
3 certain conduct, that it was suspicious when, in fact, it was
4 benign. This was not a neutral investigation. Somebody was
5 looking for, according to this witness's testimony, grounds to
6 revoke Capitol's license. This was not just an inspection to
7 see if everything was up for snuff. They were looking for
8 major violations, sufficient for revocation of Capitol's
9 license.

10 MR. JOYCE: So why didn't Mr. Hardman call
11 Mr. Shiben as a witness if there's some notorious plot --

12 MR. HARDMAN: Well, this witness --

13 JUDGE CHACHKIN: He's asking this witness what
14 instructions, if any, of what his understanding was the
15 purpose of his investigation.

16 MS. FOELAK: Your Honor, he testified, Mr. Walker
17 testified that that was not his intent, and he was the one who
18 conducted the investigation.

19 MR. JOYCE: And investigated both operations, so
20 what the heck is the point here?

21 MR. HARDMAN: I was, and I was following up that
22 notwithstanding that, and I'm not suggesting this was his
23 intent, I'm just saying that when he conducted the inspection,
24 he was aware that the Private Radio Bureau, which had
25 requested that the investigation be conducted, was looking for

1 grounds to revoke Capitol's license. Isn't that right?

2 MR. WALKER: That was my understanding. However, I
3 would like to qualify that.

4 BY MR. HARDMAN:

5 Q By all means.

6 A That does not, does not influence the investigation.
7 It may get me there, but it does not have anything to do with
8 the outcome. During the inspections, the questioning, etc.,
9 that's not a consideration.

10 Q I, I understand and, and I, I believe your report
11 will speak for itself, and I, I'm not taking issue with it.
12 But I, what I, I'm going back to is you've now been in
13 Charleston three days, you haven't had any contact with the
14 parties at the time you go to, to Capitol for inspection,
15 right?

16 A At the time we went to Capitol, we had the day
17 before --

18 Q I'm sorry, you're right. You're right. You're
19 right. The, the Capitol was second.

20 A Other than that, you're correct.

21 Q Capitol was second. And the first, when, when you
22 got there, the first thing you hear is a series of tones which
23 is unprecedented in your experience, isn't that right?

24 A That's correct.

25 Q So you're, based on the background of the case,

1 | you're immediately suspicious of the purpose of those tones,
2 | isn't that right?

3 | A Based on, on what I have heard and, at this point,
4 | because it confirms or appears to confirm RAM's allegation, I
5 | am suspicious, yes.

6 | Q Exactly. And then you go to RAM and they're sweet
7 | as pie, except for this one problem with the, with the
8 | two-minute timeout device. So that, isn't that right?

9 | A Correct.

10 | Q And so that also tends to confirm, in your mind,
11 | the, what you understand to be behind the request for this
12 | inspection. Isn't that true?

13 | A I'm, I'm sorry, let's, can you please repeat that.

14 | Q So the second step, which is when you inspect RAM,
15 | and their attitude is, you know, cooperative and, and whatever
16 | it is as reflected in your report, that is also consistent
17 | with your understanding of the reason for the inspection,
18 | isn't that right? That Capitol was the bad guy?

19 | A I can't say that I viewed Capitol as the bad guy. I
20 | viewed RAM and Capitol as the bad guys.

21 | Q All right. So they're both bad guys, okay. Which
22 | is my point, that when, that I'm getting to, when you go to
23 | inspect Capitol then on Thursday, as far as you were
24 | concerned, they were a bad guy, isn't that right?

25 | A Unless there is some explanation, yes.

1 Q Which, for the tone testing, you didn't ask for an
2 explanation of the one person, at that time, that seemed to be
3 candid and honest and forthcoming at Capitol with the
4 information you requested. Isn't that right?

5 A I also don't recall anybody suggesting at the time
6 that Mr. Harrison might could give a reason for that.

7 Q Well, and, and you didn't ask him, isn't that right?

8 A No, I did not -- that I did not, that I recall.

9 Q I'm sorry?

10 A As far as I recall, I did not.

11 Q Okay. Now let me ask you just a, a couple of
12 technical type questions. You were asked about your opinion
13 on the, whether the, the tone sequences that you heard would
14 constitute excessive testing, if indeed it was testing. You
15 -- this was from Ms. Foelak this afternoon. Do you recall
16 that exchange?

17 A I recall something along that line, yes, sir.

18 Q And I believe you were also asked then whether that
19 would constitute harmful interference, in your opinion. And I
20 believe, and correct me if I'm wrong, that your response was
21 it would if it was unnecessary. Is that a fair
22 characterization of your opinion?

23 A I think that's fair.

24 Q Okay. Well, isn't it true that if you have
25 excessive testing, whatever that is, and we had a lot of

1 testimony yesterday about what might be excessive testing, but
2 isn't it true that by definition, if some, if, if the testing
3 is excessive, that it would be unnecessary? I mean are you
4 creating some sort of a distinction here that --

5 A I think they would be the same.

6 Q Okay. The, the questions on intermodulation. In
7 response to questions from Ms. Foelak, you explained that
8 frequently or typically, perhaps, and correct me if I'm
9 mischaracterizing, you would hear some sort of a second
10 signal, such as a broadcast signal on the, as part of the
11 intermod product, is that right?

12 A It would be fairly common to hear.

13 Q Fairly common. And isn't it true that that would be
14 the case only if the broadcast signal was the second RF source
15 for the intermod?

16 A What are you defining as the second source?

17 Q Well --

18 A It takes two or more.

19 Q Two or more --

20 A Which is first, which is second.

21 Q -- broadcast, I'm sorry. The, the, what I mean is
22 the, a broadcast signal would have to be one of the sources in
23 order for you to hear that, isn't that true?

24 A That's true.

25 Q Okay. Now you, you were here, I believe, yesterday,

1 | when Mr. Peters talked about the, his opinion that the stereo
2 | effect, if you will, in the Fall of 1990, was a classic case
3 | of, it seemed to be a classic case of intermod?

4 | A I recall that, yes.

5 | Q All right. Do you disagree with his testimony, or
6 | I'm sorry, with his opinion?

7 | A To some extent I do, yes. The, well,
8 | intermodulation, the audio of that product is going to be
9 | somewhat distorted. Possibly to me, probably to you, we would
10 | not hear that. To the trained ear, to the technician who
11 | listens to this on a daily basis, he probably would be able to
12 | hear that distortion. The, there was some testimony of,
13 | concerning deviation. Deviation of this product is at a
14 | minimum twice the normal deviation.

15 | Q Okay. As, as I recall Mr. Peters testimony in
16 | response to the question, he agreed with your assessment that,
17 | that typically or more often than not, there would be audio
18 | distortion. Did you hear that testimony?

19 | A I don't recall that, no.

20 | Q But that, all right, let's assume that's a correct
21 | characterization for the moment. I, I also recall him going
22 | on to say that he has, even though that may be the norm or
23 | typical, he has had intermod experiences where there was not
24 | distortion. And my question to you, sir, is are you
25 | disagreeing with his opinion, if you will, that intermod does

1 not necessarily involve audio distortion?

2 A Right now I cannot think of a case where audio
3 distortion would not be involved.

4 Q Okay. So in your experiences, that's not the case.
5 Isn't that right?

6 A Yes.

7 Q All right. So assuming your experience is typical,
8 you, you are disagreeing with Mr. Peters' opinion?

9 A With, with that particular point, yes.

10 Q All right. Now did you hear Mr. Raymond's
11 testimony, I believe it was earlier today, that in March of
12 '91, he got a call from Mr. Capehart at RAM about a, a
13 religious broadcast station being on the, I guess 152.480, and
14 Mr. Raymond expressed puzzlement as to why he was being called
15 about that.

16 A Yes, sir. I recall that.

17 Q Okay. Isn't the fact that, that what was, assuming
18 that the statements testified to did, in fact, occur, wouldn't
19 the existence of that broadcast signal on 152.480 suggest
20 intermod to you?

21 A To me, that would suggest intermod, correct.

22 Q So if that's a correct characterization, what
23 Mr. Capehart was complaining to Mr. Raymond about was intermod
24 on 152.480, isn't that right?

25 A It's, would appear to be, yes.

1 MR. HARDMAN: I have no further questions.

2 JUDGE CHACHKIN: Just, just one thing. You have a
3 note here that the test set up was turned off by the
4 Huntington secretary when she saw that it was on and knew it
5 was not being used. Who, who --

6 MR. WALKER: This is Mr. Wilson's statement to me.

7 MS. FOELAK: Your Honor, it's referred to in PRB-3
8 of, of, in the more words.

9 JUDGE CHACHKIN: Well, I, I just wanted to ask the
10 witness who told him that. And he told me. I have no further
11 questions. You're, you're excused. Thank you. I, does the
12 Bureau have any more rebuttal witnesses?

13 MS. FOELAK: No, Your Honor.

14 JUDGE CHACHKIN: All right. Then the, the record
15 can be closed at this time? The record is closed.

16 (Where upon a brief recess was taken.)

17 JUDGE CHACHKIN: The parties would agree on the
18 following procedural dates. The proposed findings and
19 conclusions of law will be filed on or before April 8th, 1994.
20 Any replies will be filed on or before May 6th, 1994. The, as
21 far as findings are concerned, copies will be hand served on
22 the parties, including Mr. Hardman. However, as far as
23 counsel, where is he located?

24 MR. HARDMAN: Charleston.

25 JUDGE CHACHKIN: In Charleston, the parties have

1 reached an arrangement that, is there a specific date you
2 expect to get there or, or what, Mr. Hardman? What is the --

3 MR. HARDMAN: No, it, it will follow a standard
4 service format, namely it would be mailed, properly addressed,
5 with postage prepaid by the due date of April 8.

6 JUDGE CHACHKIN: All right. The record is closed
7 then. We are now in recess.

8 (Whereupon, the record was closed at 3:25 p.m. on
9 Wednesday, February 9, 1994.)

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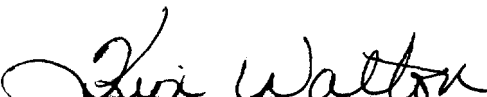
FEBRUARY 9, 1994

Date

We, the undersigned, do hereby certify that the foregoing pages, numbers 1293 through 1486, inclusive, are the true, accurate and complete transcript prepared from the reporting by ALICE WEHNER in attendance at the above identified proceeding, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription Statement of Work and have verified the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the proceeding and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the proceeding.

February 22, 1994

Date



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Free State Reporting, Inc.

February 23, 1994

Date



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